

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX.

IN THE MATTER OF:

PRC Patterson Superfund Removal Site  
Patterson, California

Chevron U.S.A. Inc.  
Chevron Corporation

ADMINISTRATIVE ORDER ON CONSENT  
FOR REMOVAL ACTION

U.S. EPA Region IX  
CERCLA  
Docket No. 2001-14

Proceeding Under Sections 104,  
106(a), 107, 122(a) and 122(h) of the  
Comprehensive Environmental  
Response, Compensation and  
Liability Act, as amended, 42  
U.S.C. Sections 9604, 9606(a), 9607  
9622(a), and 9622(h).

## **I. JURISDICTION AND GENERAL PROVISIONS**

This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency, Region IX ("US-EPA"), Chevron Corporation ("Chevron") and Chevron U.S.A. Inc ("Chevron U.S.A."). In this Order, Chevron and Chevron U.S.A. are collectively referred to as "Respondents." This Order provides for the performance of a Response Action, as defined herein, by Chevron U.S.A. in connection with the property located at 13331 Highway 33 in Patterson, California, the "PRC Patterson Superfund Removal Site" or the "Site." Chevron U.S.A. is required by this Order to complete the Response Action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment, as initially directed by Administrative Order dated April 10, 1998, US-EPA Docket No. RCRA 7003 98-09-02, as amended by Amended Administrative Order bearing the same docket number and dated September 25, 1998 (collectively, the "Chevron Order").

This Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a), 107, 122(a), and 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sections 9604, 9606(a), 9607, 9622(a), and 9622(h), respectively, and delegated to the Administrator of the United States Environmental Protection Agency by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the US-EPA Regional Administrators by US-EPA Delegation Nos. 14-14-A and 14-14-C. As such, this Order embodies a settlement between Respondents and the United States under the provisions of CERCLA.

Respondents' participation in this Order shall not constitute or be construed as an admission of either liability or of the Findings of Fact, Conclusions of Law or Determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree not to contest the basis or validity of this Order or its terms.

US-EPA acknowledges the substantial work performed by Chevron U.S.A. in complying with the terms of the Chevron Order. In this regard, US-EPA finds that the work performed by Chevron U.S.A. up through and including the Effective Date, as defined in Section XXI of this Order, has been consistent with the requirements of the Chevron Order and the National Contingency Plan.

## **II. PARTIES BOUND**

This Order applies to and is binding on US-EPA, and on the Respondents, their successors and assigns. Any change in ownership or corporate status of the Respondents, including but not limited to any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Order. Except where otherwise specifically provided herein, Respondents are jointly and severally liable for carrying out all activities required by this Order. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

Chevron U.S.A. shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Chevron U.S.A. shall be responsible for any noncompliance with this Order.

### **III. DEFINITIONS**

Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in any attachments hereto and incorporated hereunder, the following definitions shall apply:

“Administrative Order on Consent,” “AOC” or “Order” shall mean this Administrative Order on Consent for Removal Action, US-EPA Docket No. 2001-14, and all attachments hereto.

“Amended Unilateral Administrative Order” or “UAO 98-12A” shall mean the Amended Unilateral Administrative Order For Performance of Removal Action, US-EPA Docket No. 98-12A, issued November 22, 1999 and effective November 30, 1999, and all exhibits attached thereto. UAO 98-12A amended and superseded UAO 98-12, defined below.

“ARCO Order” shall mean the Administrative Order, US-EPA Docket No. RCRA 7003 98-09-01, issued by US-EPA to the Atlantic Richfield Company (“ARCO”) on April 10, 1998.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. Section 9601 et seq.

“Chevron Order” shall mean the Administrative Order, US-EPA Docket No. RCRA 7003 98-09-02, issued by US-EPA to Chevron Corporation (“Chevron”) on April 10, 1998, as amended by Amended Administrative Order bearing the same docket number and dated September 25, 1998, which substituted as respondent Chevron U.S.A. for Chevron.

“Contractor” shall mean Chevron U.S.A.’s contractors and subcontractors performing the installation/construction, and operation and maintenance activities relating to any of the specific actions at the Site, which Chevron U.S.A. is required to perform.

“Day” shall mean a calendar day unless expressly stated to be a business day. “Business Day(s)” shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next Business Day.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

"Oversight Costs" shall mean all past, present and future costs, including, but not limited to, direct and indirect costs and interest incurred or paid by the United States, its employees, agents, contractors, consultants, and other authorized representatives, with regard to the Site.

"Paragraph" shall mean a portion of this Order identified by an Arabic numeral, unless otherwise indicated herein.

"Parties" shall mean US-EPA, on behalf of the United States, Chevron U.S.A. and Chevron.

"Respondents" shall mean Chevron U.S.A. and Chevron, unless otherwise stated herein.

"Response Action" shall mean those specific work items Chevron U.S.A. is required to perform, as set forth in Section VII of this Order and the Chevron Order.

"Section" shall mean a portion of this Order identified by a Roman numeral and may include one or more paragraphs, unless otherwise stated herein.

"Site" shall mean the PRC Patterson Superfund Removal Site, encompassing the former PRC Patterson facility, including the storage tank designated "S-3," which comprises approximately 20 acres, located at 13331 Highway 33 in Patterson, Stanislaus County, California, approximately 2 miles north of the City of Patterson.

"State" shall mean the State of California, and all of its political subdivisions and agencies, including the California Environmental Protection Agency's Department of Toxic Substances Control ("DTSC").

"Unilateral Administrative Order" or "UAO 98-12" shall mean the Unilateral Administrative Order For Performance of Removal Action, US-EPA Docket No. 98-12, issued August 12, 1998, and all exhibits attached thereto.

"United States" shall mean the United States of America.

"US-EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Vernalis Site" shall mean the property at 1141 Highway 33 in Vernalis, California, which is the subject of the ARCO Order, and on which is located, inter alia, a large storage tank containing over 1 million gallons of sludge and oil.

#### **IV. FINDINGS OF FACT**

1. The Site is located at 13331 North Highway 33 in Patterson, Stanislaus County, California. The approximately 20-acre Site is surrounded primarily by agricultural land. The City of Patterson is located approximately two miles south of the Site. There are

numerous irrigation canals located in the immediate vicinity of the Site. Several of these canals drain into Del Puerto Creek, which flows within a mile of the Site. Del Puerto Creek flows into the San Joaquin River.

2. Operations at the Site were commenced in the early 1980's by Recycletron Oil Inc. ("RCI"), a California corporation, doing business as Refineries Services. RCI was a recycler of waste oil and oily water. In 1989, RCI merged with Petroleum Recycling Corporation, a California corporation. Shortly thereafter, a wholly separate California corporation, PRC Patterson Inc. ("PRC") was formed. PRC stopped accepting wastes in October, 1996, but operated the Site continuously until sometime in 1997.
3. On October 31, 1997, US-EPA received a verbal request for assistance at the Site from DTSC. US-EPA, in conjunction with DTSC, conducted a preliminary inspection of the Site on that date and made the following observations: US-EPA observed that the operator of the Site apparently had abandoned the facility and that general Site conditions had begun to deteriorate. The facility lacked security and had been heavily vandalized. Because of the age and condition of the petroleum storage tanks and containers at the Site, many tanks and containers appeared to pose a substantial risk of failure. Several of these tanks were leaking, and inspection revealed that one of the larger tanks had failed catastrophically in the past.
4. On November 18, 1997, following the receipt of a written request for assistance from DTSC, US-EPA initiated an emergency action to stabilize these unsafe and dangerous conditions that presented an endangerment to the public health, welfare, and the environment. US-EPA provided Site security, upgraded the perimeter fence and berm, and pumped down the liquid level in several storage tanks which were either overflowing or on the verge of overflowing.
5. From December 1 through December 6, 1997, US-EPA conducted an assessment of the Site. Results of sampling and analyses conducted during this assessment are presented in the March 1998 report entitled "Envirofur/PRC Patterson Oil Recycling Facility Removal Assessment" prepared by Ecology and Environment. The following is a brief inventory of items and materials stored onsite at the time that the report was published:
  - a. Numerous process tanks, storage tanks, pressure tanks, pumps, a water treatment system, filtration equipment, heating, distillation and refining equipment, office trailers, laboratory trailers, and a large warehouse. The tanks and equipment contained varying amounts of oil, sludge, wastewater or mixtures of all three substances. Many of the tanks were observed to be leaking. Two of the large storage tanks had large holes in their roofs.
  - b. Several of the large storage tanks at the Site contained large volumes of liquid. These tanks are referred to as Storage Tank S1, Storage Tank S2, Storage Tank S3, Storage Tank S4, and Storage Tank S5.

- c. The Site also included more than 1,100 drums, the majority of which contained "drained used oil filters," approximately 40 drums that contained chemical products, 14 roll-off bins labeled as hazardous waste dirt bins, and two trailers used as onsite laboratories that contained various chemicals for testing of incoming oil.
- 6. The sampling conducted by US-EPA's contractor of the waste oil and oily wastewater in Storage Tanks S1, S2, S4, S5 and P2, confirmed the presence of Cadmium, Chromium, Copper, Lead, Mercury and Nickel.
- 7. The materials stored at the Site contained hazardous substances. The threat of a release of these hazardous substances was exacerbated by the aging and dilapidated condition of the tanks, the lack of a roof on Storage Tank S4, several holes in the roof of Storage Tank S1, a large hole in the roof of Storage Tank S3, seasonal rains, the lack of regular or routine inspection and maintenance, and the fact that PRC Patterson Inc., the Site owner and operator, has abandoned the entire Site.
- 8. US-EPA issued the Chevron Order on April 10, 1998, which required Chevron to remove Tank S3 at the Site. Pursuant to an amended Chevron Order, dated September 25, 1998, Chevron U.S.A. undertook the required actions, and has completed the Response Action subject only to the requirements of this Order.
- 9. The ARCO Order, also issued on April 10, 1998, directed ARCO to conduct a separate removal action in connection with a large storage tank containing over 1 million gallons of sludge and oil located at the Vernalis Site.
- 10. On August 12, 1998, US-EPA issued UAO 98-12 requiring that the named entities, which include ARCO, conduct a removal action with respect to the waste oil, sludge, and oily wastewater present at the Site. Because of Chevron U.S.A.'s cooperation under the Chevron Order, Respondents were not named in UAO 98-12.
- 11. In response to UAO 98-12, a group of 19 of the 53 potentially responsible parties named as respondents formed the Patterson Environmental Response Group ("Group") to cooperate in complying with the terms of UAO 98-12. The Group also established the Patterson Environmental Response Trust ("Trust") to provide a mechanism for undertaking and funding the Removal Actions required by UAO 98-12. The Group, through the Trust, undertook compliance with UAO 98-12.
- 12. On November 22, 1999, US-EPA issued an amendment to UAO 98-12, which became effective on November 30, 1999. This Amended Unilateral Administrative Order, UAO 98-12A, supercedes UAO 98-12, and includes all the parties named in the UAO, as well as additional responsible parties in connection with the Site. The Trust assumed the responsibility to complete the removal activities required under UAO 98-12 and UAO 98-12A, and that required removal now is complete. To facilitate an efficient method to

determine compliance with UAO 98-12 and UAO 98-12A, US-EPA provided notice to the potentially responsible parties that US-EPA would consider their contribution, participation or other settlement of liability with the Trust as compliance with UAO 98-12 and UAO 98-12A. Although Chevron U.S.A. diligently undertook compliance with the Chevron Order, Respondents have not contributed to, participated in, or otherwise resolved their liability to the Trust.

13. From November 1, 1982 through December 11, 1996, the total volume of waste deposited at the Site was in excess of 130 million gallons. Chevron U.S.A. has demonstrated that, to comply with the Chevron Order, Chevron U.S.A. incurred costs totaling approximately five million, eight hundred thousand dollars (\$5,800,000.00). Storage Tank S-3 contained approximately two million, fifty-eight thousand, eight hundred eighty nine (2,058,889) gallons of waxy petroleum product, waste oil, oily water and sludge. The Trust has presented information asserting that, to comply with UAO 98-12 and UAO 98-12A, the Trust incurred costs totaling an approximate nine million, five hundred thousand dollars (\$9,500,000.00).
14. Most wastes at the Site were documented only by bills of lading that do not detail the characteristics and particular qualities of the wastes. Therefore, because the wastes at the Site were commingled, there is no evidence suggesting that the wastes contributed by each respondent to the Site are more toxic or of significantly greater hazardous effect than other waste at the Site.
15. By separate order on consent, US-EPA has provided a covenant not to sue and contribution protection to the Trust and to those parties that contributed, participated or otherwise settled with the Trust. By similar order on consent, US-EPA intends to provide a covenant not to sue and contribution protection to ARCO for its contribution and participation to the removal of wastes from the Site, including the Vernalis Site.
16. By this Order, US-EPA intends to resolve Respondents' compliance with the Chevron Order, and to provide a covenant not to sue and contribution protection for the Site, as set forth herein.

#### **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, and the Administrative Record supporting this action, US-EPA has made the following conclusions of law and determinations:

1. The PRC Patterson Superfund Removal Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. The contaminants found at the Site, as identified in Section IV of this Order, "Findings of Fact," include "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

3. Respondents are "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).
4. Respondents may be liable at the Site under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).
5. The conditions that existed at the Site, as described in the Chevron Order and Section IV of this Order ("Findings of Fact"), constituted an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).
6. The actual or threatened release of hazardous substances from the Site presented an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), which included, but was not limited to the following:
  - a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; and
  - b. hazardous substances, pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, which posed a threat of release.
7. The conditions at the Site constituted an imminent and substantial threat to public health, welfare, or the environment based on a consideration of the factors set forth in the NCP at 40 C.F.R. Section 300.415(b), and the actions required by the Chevron Order and this Order are necessary to protect the public health, welfare, or the environment.
8. Prompt settlement with Respondents is practicable and in the public interest as may be required within the meaning of Section 122(a) of CERCLA, 42 U.S.C. Section 9622(a).
9. The actions required by this Order, if properly performed, will be deemed consistent with the NCP, and are appropriate to protect the public health, welfare, or the environment.
10. Chevron U.S.A.'s actions to comply with the Chevron Order undertaken prior to the Effective Date of this Order substantially achieved the actions required by the Chevron Order. This Order directs the final activities required to complete the Response Action at the Site.

## **VI. NOTICE TO THE STATE**

US-EPA has notified the State of California of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), by providing the Department of Toxic Substances Control ("DTSC") a copy of this Order.



## **VII. ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Chevron U.S.A. shall comply with the following provisions, including but not limited to any attachments to this Order, and all documents incorporated by reference into this Order. Chevron U.S.A., either itself or by retaining Contractors as set forth in this Order, shall complete the Response Action as provided for in the Chevron Order and this Order, and perform the following actions:

1. **Designation of Contractor, Project Coordinator, and On-Scene Coordinator**

Chevron U.S.A. has retained, and US-EPA has approved, Geo Syntech to perform the Response Action. Chevron U.S.A. shall notify US-EPA of the names and qualifications of any other Contractors or subcontractors retained to perform any part of the Response Action under this Order at least ten (10) business days prior to such new entities' commencement of work at the Site. US-EPA retains the right to disapprove of any or all of the Contractors or subcontractors retained by Chevron U.S.A.. If US-EPA disapproves of a Contractor selected by Chevron U.S.A., then Chevron U.S.A. shall retain a different Contractor fifteen (15) business days following US-EPA's disapproval and shall notify US-EPA of that Contractor's name and qualifications within twenty (20) business days of US-EPA's disapproval.

Chevron U.S.A. has designated, and US-EPA has approved, Geo Syntech as the Project Coordinator responsible for administration of all the Chevron U.S.A.'s actions at the Site. To the greatest extent possible, during the Response Action the Project Coordinator shall be present at the Site or readily available. Receipt by Chevron U.S.A.'s Project Coordinator of any notice or communication from US-EPA relating to this Order shall constitute receipt by Chevron U.S.A..

US-EPA has designated Richard Martyn, an employee of Region IX of US-EPA, as its primary On-Scene Coordinator ("OSC"), and designated representative at the Site, who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. Chevron U.S.A. shall direct all submissions required by this Order to the OSC at US-EPA, Region IX (SFD-6), 75 Hawthorne Street, San Francisco, California 94105.

Consistent with the provisions of this Order, US-EPA designates John Jaros as an alternate OSC, in the event the designated OSC, Rich Martyn, is not present at the Site, has expressly delegated duties or responsibilities to the alternate OSC, or is otherwise unavailable. The alternate OSC shall have the authority, duties and responsibilities vested in the OSC when acting in the stead of the primary OSC. Nothing in this Order shall limit the authority of the US-EPA OSC under federal law.

US-EPA and Chevron U.S.A. may change their respective primary and alternative OSC or Project Coordinator. Notification of such change shall be made by notifying the other Party in

writing at least five (5) days prior to such change, except in case of emergency, in which case notification shall be made orally followed by written notification as soon as possible.

2. Work to Be Performed

Chevron U.S.A. shall perform the following tasks, which shall constitute the Response Action under this Order:

- a. Chevron U.S.A. shall maintain compliance with the duties and obligations set forth in the Chevron Order, the terms of which are incorporated herein by reference. Chevron U.S.A. further is ordered to perform all work and make submittals and certifications as set forth below within the time schedules specified. Due dates falling on a Saturday, Sunday, or federal holiday will be automatically extended to the next Business Day.
- b. Chevron U.S.A. has been submitting monthly progress reports ("Progress Reports") to US-EPA pursuant to the requirements of the Chevron Order. Additional Progress Reports are not required, unless US-EPA provides written notification to Chevron U.S.A. requiring the submission of additional Progress Reports, which in any case shall not be required after US-EPA issues the Notice of Completion, as provided under Section XVIII of this Order.
- c. Pursuant to and in compliance with the Chevron Order, Chevron U.S.A. has submitted to US-EPA and obtained approval of a Sampling and Analysis Plan and a Health and Safety Plan. All work for the Response Action shall be consistent with the approved Health and Safety Plan.
- d. Pursuant to and in compliance with the Chevron Order, Chevron U.S.A. has implemented the tasks described in the Sampling and Analysis Plan, and Chevron U.S.A. shall continue such tasks as required to complete the Response Action.
- e. Pursuant to and in compliance with the Chevron Order, Chevron U.S.A. has submitted, and US-EPA has approved a Tank Removal Work Plan.
- f. Pursuant to and in compliance with the Chevron Order, Chevron U.S.A. has initiated, and made substantial progress with respect to the tasks described in the Sampling and Analysis Plan and the Tank Removal Work Plan, as supplemented and amended with US-EPA's approval. Chevron U.S.A. shall continue such tasks under the Sampling and Analysis Plan and the Tank Removal Work Plan, and such other tasks as the OSC requires to maintain consistency with the NCP, until completed.
- g. Pursuant to and in compliance with the Chevron Order, Chevron U.S.A. provided security for the Site by arrangement through the Trust. In August 2000, when the

removal of wastes pursuant to the Chevron Order; UAO 98-12 and UAO 98-12A was substantially complete, US-EPA notified the Trust that security was no longer required at the Site. Therefore, Chevron U.S.A.'s obligation to provide security at the Site is terminated.

- h. All Contractors, transporters and treatment, storage, disposal or recycling facilities used or proposed for use during this Response Action are subject to US-EPA approval.
- i. All documents, including technical reports, and other correspondence to be submitted by the Chevron U.S.A. pursuant to requirements of this Order, shall be sent by overnight mail pursuant to Section XXII of this Order, "Provision of Notice," and shall be deemed submitted on the date received by US-EPA. Chevron U.S.A. shall submit two (2) copies of each document to US-EPA, and two (2) copies to DTSC. Copies to DTSC shall be delivered via first class U.S. mail.
- j. US-EPA shall review, comment on, and approve or disapprove each plan, report, or other deliverable submitted by Chevron U.S.A. pursuant to the requirements of this Order. US-EPA comments on draft deliverables shall be addressed by the Chevron U.S.A. US-EPA shall notify Chevron U.S.A. in writing of US-EPA's approval or disapproval of a final deliverable. In the event of any disapproval, US-EPA shall specify the reasons for such disapproval, US-EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by US-EPA, US-EPA shall first notify Chevron U.S.A. of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Order, or may conduct the remaining work required by this Order.
- k. For purposes of this Order, US-EPA's authorized representatives shall include, but not be limited to, any consultants and Contractors hired by US-EPA to oversee activities required by this Order.

### 3. Effect of Noncompliance with Work Performance and Schedule

Except as otherwise stated in this Order, any noncompliance with the actions to be performed or the schedules set forth within Section VII, Paragraph 2, shall be considered a violation of this Order.

### 4. Final Report

Within thirty (30) days after completion of all actions required under this Order, Chevron U.S.A. shall submit for US-EPA review and approval a Final Report summarizing the actions taken to

comply with this Order. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports," 40 C.F.R. § 300.165. The Final Report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Chevron Order and this Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated (e.g., manifests, invoices, bills, contracts, and permits). In addition, Chevron U.S.A. shall certify, through its Contractors, that the Final Report is complete and accurate to the best of their collective knowledge.

5. Access to Property and Information

Chevron U.S.A. shall obtain and provide access to the Site and off-site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to US-EPA employees, contractors, agents, consultants, designees, representatives, and State of California representatives.

Chevron U.S.A. shall submit to US-EPA, upon request, the results of all sampling or tests and all other data generated by Chevron U.S.A. or its Contractors, or on Chevron U.S.A.'s behalf during implementation of this Order.

6. Record Retention, Documentation, Availability of Information

Respondents, individually or through the designated Contractor, shall preserve all documents and information relating to work performed under this Order, or relating to the solid or hazardous wastes found on or released from the Site, for five (5) years following completion of the Response Action required by this Order. The record retention and preservation obligation created by this paragraph applies only to those documents in the possession, custody and control of Respondents or Contractors, and does not apply to the documents or records left at the Site by PRC.

Respondents may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to US-EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7). US-EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by US-EPA, US-EPA may make it available to the public without further notice to Respondents.

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7. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance with OSWER Directive Number 9834.11, November 13, 1987. As of the date of this Order, the US-EPA has approved of all facilities where hazardous substances, pollutants or contaminants were sent for treatment, storage, or disposal. The US-EPA will provide information on the acceptability of any additional facility under Section 121(d)(3) of CERCLA and the above directive.

8. Compliance with Other Laws

Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state and federal laws and regulations except as provided in CERCLA Section 121(e). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable considering the exigencies of the situation as determined by US-EPA, comply with applicable or relevant and appropriate requirements under federal environmental, state environmental or facility siting laws.

9. Emergency Response and Notification of Releases

If any incident or change in Site conditions occurs during the actions conducted pursuant to this Order, which causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Chevron U.S.A. shall immediately take all appropriate action in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Chevron U.S.A. shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan. Chevron U.S.A. shall also immediately notify the OSC or, in the event of his unavailability, shall notify the alternate OSC designated in this Order. If neither the OSC or alternate OSC is available, Chevron U.S.A. shall notify the US-EPA Region IX Emergency Response Unit, by telephone at (415) 744-2000 of the incident or Site conditions.

If Chevron U.S.A. fails to respond, US-EPA may respond to the release or endangerment, and Chevron U.S.A. shall reimburse US-EPA for all costs and attorneys' fees incurred responding to the threat or endangerment.

In addition, in the event of any release of a hazardous substance from the Site, Chevron U.S.A. shall immediately notify US-EPA, Region IX at telephone number (415) 744-2000 and the National Response Center at telephone number (800) 424-8802. Chevron U.S.A. shall submit a written report to US-EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103(c) and Section

304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 et seq.

The requirements of this Paragraph do not apply to any incident, or change in conditions relating to actions conducted pursuant to UAO 98-12 or UAO 98-12A, or releases or threats of releases, or an endangerment to the public health, welfare, or the environment related to the subject matter of UAO 98-12 or UAO 98-12A, provided that such threat or endangerment is not caused by Respondents or any activity that is the subject of or in the course of this Order.

#### 10. NCP Compliance

All work performed by Chevron U.S.A. to comply with the Chevron Order and this Order is consistent with the National Contingency Plan.

### **VIII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR**

US-EPA's OSC shall be responsible for overseeing Chevron U.S.A.'s implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

### **IX. DISPUTE RESOLUTION**

The Parties to this Order shall attempt to resolve, expeditiously and informally, any disputes concerning this Order.

If Respondents object to any US-EPA action taken pursuant to this Order, including billings for future response costs, if any, Respondents shall notify US-EPA in writing of such objections within thirty (30) days of such action, unless the objections otherwise have been informally resolved. All written notices required by this Section shall be given as set forth in Section XXII of this Order, "Provision of Notice." If Respondents and US-EPA are unable to resolve a dispute by informal negotiation, upon written notice to US-EPA, the Respondents may initiate an alternative dispute resolution ("ADR") process, including, but not limited to mediation or fact finding, to be utilized by the parties to facilitate formal negotiations.

US-EPA and Respondents shall have 30 days from US-EPA's receipt of the Respondents' written objections to attempt to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of US-EPA. US-EPA's decision regarding an extension of the Negotiation Period shall not constitute a US-EPA action subject to dispute resolution or final agency action giving rise to judicial review.

The parties to this Order agree to select an ADR professional in accordance with the following procedures:

- a. Within 10 days of receipt of the Respondents' notice to initiate use of ADR, the OSC shall forward to Respondents a list of ADR professionals ("ADR Selection List") available through the Dispute Resolution Support Services Contract managed by US-EPA.
- b. Within five (5) days of Respondents' receipt of the ADR Selection List, the parties shall provide each other in writing the names of 5 persons from the ADR Selection List proposed to serve as ADR professionals for the matter in dispute. The ADR professionals proposed by each Party shall not have any past, present, or planned future business relationships with the parties, other than for ADR activities.
- c. Within two (2) days of the receipt of the list of proposed ADR professionals, each party shall advise the other in writing of acceptable professionals. The parties shall select an ADR professional from the list of acceptable professionals and enter a contract for ADR services with such person within 20 days of the receipt of the list of proposed ADR professionals.

US-EPA agrees to extend the Negotiation Period as appropriate to allow for selection and contracting with ADR professionals. However, inability to select an ADR professional or to execute a contract for ADR services shall not extend the Negotiation Period beyond that specified by US-EPA.

Meetings or conferences with the ADR professional shall be treated as confidential. Statements made by any person during any such meetings or conferences shall be deemed to have been made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence and applicable state rules of evidence, and shall not be offered in evidence in any proceeding by any person. The ADR professional shall be disqualified as a witness, consultant, or expert in any impending or future legal action relating to the subject matter of this Order, including those legal actions between persons not a party to the mediation. If the selected ADR professional fails to comply with the confidentiality requirements of this section, his/her contract will be terminated and he/she will be excluded from any future mediation under this Order. If a party, whether Respondents or US-EPA, fails to comply with the confidentiality requirements of this Section, then that party will forfeit its rights under this Order to request future use of ADR, if any remain, and Respondents may be responsible for stipulated penalties for such breach as provided in Section XII, "Stipulated and Statutory Penalties."

Any agreement reached by the Parties pursuant to this Section shall be in writing, signed by the parties, and shall upon the signature by the parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the Negotiation Period, a US-EPA management official, of Section Chief level or higher, will issue a written decision on the dispute to the Respondents. The decision of the management official shall be incorporated into and become an enforceable element of this Order on Respondents'

receipt of the decision regarding the dispute. Respondents' obligations under this Order shall not be tolled by submission of any request for dispute resolution under this Section.

Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached during the Negotiation Period or through ADR, whichever occurs. No US-EPA decision made pursuant to this Section shall constitute a final agency action giving rise to judicial review.

#### **X. FORCE MAJEURE**

Respondents agree to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to a Contractor or subcontractors, which delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondents shall notify US-EPA orally within 24 hours after the event, and in writing within (5) business days after Respondents become or should have become aware of events that constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by the Respondents.

If US-EPA agrees that a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended by written agreement between US-EPA and Respondents.

An extension of the time for performance of the requirement directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent requirement.

If US-EPA does not agree that the delay in performance of a requirement under this Order is or was attributable to a force majeure, or does not agree with Respondents on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in this Order.

#### **XI. RESERVATION OF RIGHTS**

Except as specifically provided in this Order, nothing herein shall limit the power and authority of US-EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened



release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent US-EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform or pay for additional activities pursuant to CERCLA or any other applicable law. In addition to the rights retained in this Section or Section XIII, "Other Claims/Covenant Not To Sue by Respondents," EPA reserves, and this Order is without prejudice to all rights against Respondents with respect to criminal liability and liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

This Order expressly does not address, include, or otherwise affect the liability of Respondents arising out of property conditions at the Site unknown at the time of completion of the removal action to be performed pursuant to this Order.

## **XII. STIPULATED AND STATUTORY PENALTIES**

After a notice of non-compliance with this Order and a reasonable opportunity to cure, for each day or portion thereof that Respondents fail to perform fully any requirements of this Order in accordance with any schedule established pursuant to this Order, including those stated in any plan approved pursuant to the Chevron Order and adopted by this Order, within the sole discretion of US-EPA, Respondents shall be liable as follows:

After a notice of non-compliance with this Order and a reasonable opportunity to cure, then on receipt of written demand by US-EPA, Respondents shall make payment to US-EPA within 15 days. Interest shall accrue on late payments as of the date the payment is due, which is the date of the written demand for payment of penalties under this Section.

A "reasonable opportunity to cure," as used in this Section, shall not exceed thirty (30) days unless otherwise determined by US-EPA in its sole discretion and expressly stated in writing by US-EPA. Penalties shall accrue and be assessed after the expiration of the reasonable opportunity to cure, and shall relate back to the date of the action or inaction germane to the notice of non-compliance. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. The payment of penalties shall not alter in any way Respondents' obligations to complete the performance of the work required under this Order.

The following stipulated penalties shall accrue per violation per day as follows:

<u>Period of Non-Compliance</u>	<u>Penalty per Violation per Day</u>
First Day through 14 <sup>th</sup> day	\$750
15 <sup>th</sup> day through 30 <sup>th</sup> day	\$2,500
31 <sup>st</sup> day and thereafter	\$5,000

Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation. Should Respondents

violate this Order or any portion thereof, US-EPA may carry out any required action unilaterally, pursuant to CERCLA Section 104, 42 U.S.C. Section 9604, and may seek judicial enforcement of this Order.

### **XIII. OTHER CLAIMS/COVENANT NOT TO SUE BY RESPONDENTS**

By issuance of this Order, the United States and US-EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or US-EPA shall not be deemed a party to any contract entered into by the Respondents, their directors, officers, employees, agents, successors, representatives, assigns, Contractors, or consultants in carrying out actions pursuant to this Order.

Except as expressly provided in Section XIV of this Order, "Covenant Not to Sue," nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents, or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. Section 9611(a)(2). Respondents waive any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. Sections 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

Respondents further covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, Oversight Costs, or this Order, and including, but not limited to: (1) claims or causes of action against any department, agency or instrumentality of the United States under CERCLA Section 107 or 113 of CERCLA, 42 U.S.C. Section 9607 and 9613, related to the Site; and, (2) any claims or causes of action arising out of response activities at the Site, including those based on US-EPA's selection of removal actions, oversight of response activities or approval of plans for such activities.

No action or decision by US-EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. Section 113(h).

### **XIV. COVENANT NOT TO SUE**

Except as provided in Section XI of this Order ("Reservation of Rights") and Section XIII ("Other Claims/Covenant Not To Sue By Respondents"), in consideration of performing the Response Action, on issuance of the US-EPA notice referred to in Section XVIII of this Order ("Notice of Completion"), US-EPA covenants not to sue or to take administrative action against Respondents, pursuant to Sections 106 and 107(a) of CERCLA, for Oversight Costs,

performance of the Response Action, and the work required by, or EPA response costs incurred in connection with, UAO 98-12, UAO 98-12A, or the ARCO Order.

These covenants not to sue are conditioned on the complete and satisfactory performance by Respondents of their obligations under this Order. These covenants not to sue extend only to the Respondents, and do not extend to any other person.

#### **XV. CONTRIBUTION PROTECTION**

Except as expressly set forth herein, nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Order. With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that Respondents are entitled to protection from contribution actions or claims, including any such claims by any persons not Parties to this Order, relating to matters addressed in this Order to the maximum extent provided by Section 113(f), and 122(h)(4) of CERCLA, 42 U.S.C. Sections 9613(f), and 9622(h)(4).

For purposes of this Section XV, the "matters addressed" in this Order shall include all costs or liability for the Response Action, for Oversight Costs, and for the matters addressed in UAO 98-12, UAO 98-12A, and the ARCO Order.

Nothing in this Order precludes US-EPA or Respondents from asserting any claims, causes of action or demands against any persons not Parties to this Order for indemnification, contribution, or cost recovery.

#### **XVI. INDEMNIFICATION**

Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondents, Respondents' officers, heirs, directors, employees, agents, Contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any persons for performance of work on or relating to the Site, including claims on account of construction delays, but excluding the subject matter of, or actions relating to, UAO 98-12 or UAO 98-12A, when the cause or damages or claim for indemnification is not the result of any action or activity of the Respondents.

The requirements of this Paragraph do not apply to any incident, or change in conditions relating to actions conducted pursuant to UAO 98-12 or UAO 98-12A, or releases or threats of releases, or an endangerment to the public health, welfare, or the environment related to the subject matter of UAO 98-12 or UAO 98-12A, so long as the incident, change in conditions, releases or threats of releases are not the result of any action or activity of the Respondents.

Respondents agree to pay the United States all costs incurred by the United States, including litigation costs, arising from or on account of claims made against the United States based on any of the acts or omissions referred to in this Section. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between Respondents and any person for the performance of work on or relating to the Site, including, but not limited to claims on account of construction delay.

#### **XVII. MODIFICATIONS**

If Respondents seek permission to deviate from the requirements of this Order or any approved work plan or schedule, Chevron U.S.A.'s Project Coordinator shall submit a written request to the US-EPA OSC for approval, outlining the proposed modification and its basis. US-EPA's OSC shall respond to any such written request in writing within ten (10) days, approving, approving with conditions, or denying Respondents' request. If Respondents disagree with the decision of the OSC, Respondents may follow the procedures set forth in the Dispute Resolution section of this Order.

No informal advice, guidance, suggestion, or comment by US-EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of any obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

#### **XVIII. NOTICE OF COMPLETION**

When US-EPA determines, after US-EPA's review of the Final Report, described in Section VII, Paragraph 4 of this Order, that the Response Action has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, US-EPA will provide notice to the Respondents of such determination. If US-EPA determines that the Response Action has not been completed in accordance with this Order, US-EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Respondents shall correct such deficiencies and shall submit a modified Final Report in accordance with US-EPA's notice. Failure by Respondents to correct the identified deficiencies shall be a violation of this Order.

#### **XIX. PUBLIC COMMENT**

Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i), requires US-EPA to publish notice of this proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, and to consider comments filed in determining whether to consent to the proposed settlement. After consideration of any comments submitted during the thirty (30) day public comment period held pursuant to Section 122(i) of CERCLA, US-EPA may withdraw or withhold consent to this Order if comments received disclose facts or considerations that indicate that this Order is inappropriate, improper or inadequate.

## **XX. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order, or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, the Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

## **XXI. EFFECTIVE DATE**

This Order shall be effective five (5) days after the Order is signed by the Regional Director of Superfund Division or his designee (the "Effective Date"). The signing of this Order by the Regional Director of Superfund Division or his designee follows the Public Comment period described in Section XIX of this Order.

## **XXII. PROVISION OF NOTICE**

Any written notice required to be given pursuant to this Order shall be sent via overnight mail. Such notice shall be given as follows:

### **As to US-EPA:**

Richard Martyn  
On-Scene Coordinator  
United States Environmental  
Protection Agency, Region IX (SFD-6)  
75 Hawthorne Street  
San Francisco, California 94105  
Telephone: (415) 744-1500

### **As to Respondents:**

Mark P. Stella  
Chevron Environmental Management  
Company  
6001 Bollinger Canyon Road  
San Ramon, California 94583  
Telephone: (925) 842-1933

Any oral notice required to be given pursuant to this Order may be given to the respective Parties using the telephone numbers referenced above. Any Party may change its address for notice purposes by sending a notice of address change to the other Parties.

## **XXIII. EXECUTION IN COUNTERPARTS**

This Order may be executed in any number of counterparts, each of which when executed and delivered to US-EPA shall be deemed to be an original, but such counterparts shall together

constitute one and the same document. The Parties agree that proof of execution can be made by a Party providing a facsimile copy of an original signature.

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and to bind the party they represent to this document.

Agreed this 21<sup>st</sup> day of September, 2001.

By 

Title ASSISTANT SECRETARY

For Chevron Corporation - "Respondent"

Agreed this 21<sup>st</sup> day of September, 2001.

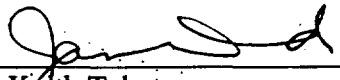
By 

Title ASSISTANT SECRETARY

For Chevron U.S.A., Inc. - "Respondent"

[Separate Signature Page Following For The United States Environmental Protection Agency]

It is so ORDERED and Agreed this 14<sup>th</sup> day of December 2001.

By:   
for Keith Takata

Regional Director of Superfund Division  
Region IX  
United States Environmental Protection Agency

**ATTACHMENT A**

**LIST OF WORK PLAN SUBMITTALS TO US-EPA**

Health and Safety Plan for Tank S3 - Oct. 30, 1998

Contingency Plan for Tank S3 - Oct. 30, 1998

Pilot Test Sampling Summary and Results - Oct. 30, 1998

Tank S3 Removal Work Plan - July 28, 1998